***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **C.W.P. No.18012 of 1997**
Date of decision: 12.12.2007

Rajinder Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

2. **C.W.P. No.10079 of 1998**

Bhupinder Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. K.G.Chaudhry, Advocate for the petitioners

Mr. Ram Lal Gupta, Additional Advocate General, Punjab for respondents.

****

RAJESH BINDAL, J.

This order will dispose of two petitions bearing Civil Writ Petition Nos. 18012 of 1997 and 10079 of 1998 as common questions of law and facts are involved.

2. The facts are extracted from Civil Writ Petition No. 18012 of 1997.

3. The petitioners have approached this Court by filing the present writ petition praying for quashing of impugned order dated May 30, 1997 alleged to have been passed by the Director General of Police, Punjab whereby policy decision was taken to the effect that select list of the constables being more than three years old was invalidated. Further prayer is for a direction to the respondents to allot constabulary numbers to the petitioners having been duly selected.

4. The grievance of the petitioners is that inspite of their having

***

been duly selected by the respondents in the process of selection initiated in the year 1993, they have not been given constabulary numbers.

5. In the earlier round of litigation by some of the selected candidates for allotment of constabulary numbers on the plea that in the matter of appointments, pick and choose policy had been adopted by the respondents ignoring the merit position, this Court vide its detailed order dated October 17, 1996 passed in Civil Writ Petition No. 12860 of 1996 (Kulwant Singh etc. Vs. State of Punjab etc.) directed as under:-

> "We, therefore, dispose of the writ petitions with the following directions:-
>
> (i) The department shall publish the merit list in newspapers (Punjabi Tribune, Dainik Tribune (Hindi edition) and Punjab Kesari (Punjabi edition) having wide circulation in the State of Punjab;
>
> (ii) The Department shall take steps to dispense with the services of those who have been appointed by passing the merit. This would necessarily involve giving of show cause notice to such persons and passing of appropriate orders after giving opportunity of hearing to such persons. This exercise shall be completed within next three months;
>
> (iii) The consequential vacancies which may become available shall be filled by appointing candidates strictly in accordance with the merit keeping in view the reservation, if any and;
>
> (iv) In view of the statement made by learned Deputy Advocate General, Punjab that there is prohibition on future recruitment, we direct the department that in case any appointment is made in relaxation of the ban imposed by the Government then merit list prepared by the department shall be taken into consideration while appointing the candidates. This shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made. With

***

respect to the SPOs, we leave it open to the Government to take policy decision regarding their appointments."

6. It is further alleged that when the directions given by this Court in Kulwant Singh's case (supra) were not complied with, C.O.C.P. No. 1060 of 1997 was filed wherein this Court found that except in case of Bhupinder Singh, who was at merit No. 2882 and Lal Chand, who was at merit No. 1297, the directions issued by this Court on October 22, 1997 were complied with. The above referred two candidates were wrongly denied constabulary numbers. The contention raised by learned counsel for the petitioners in the contempt petition regarding invalidation of the alleged policy dated May 30, 1997 was considered in the following terms:-

"Mr. K.G.Chaudhry, learned counsel for the petitioners strenuously contended before me that the policy decision taken on 30.5.1997 by the Director General of Police invalidating the merit list is illegal and arbitrary and that the Director General of Police had no power to take such a decision. According to the counsel, such a decision could be taken by the State Government and, therefore, the policy decision should be ignored being null and void and the respondents directed to give constabulary numbers to all the candidates on the merit list. This argument is being noticed only to be rejected. As is clear from the directions issued on 17.10.1996, the respondents were at liberty to take a policy decision regarding the validity of the merit list as the same had been prepared more than three years back. Accordingly, the Director General of Police decided on 30.5.1997 that after the recruitment of the candidate at serial number 3070 the remaining list would be invalidated and that further recruitment be not made from that list. Once it is established that such a policy decision has been taken, it is not open to the petitioners to challenge the validity of that decision in contempt proceedings. This court while exercising contempt jurisdiction cannot treat the decision

***

of the Director General of Police as null and void and issue directions to the respondents to issue constabulary numbers to all the selected candidates."

7. The contempt petition has ultimately been disposed of on October 22, 1997 with a direction to the respondents to issue constabulary numbers to the two left out selected candidates, which were in the merit list upto which the appointments were made by respondents.

8. In terms of the observations made by this Court, while dealing with the Contempt Petition filed by the selected candidates, the present petition was filed by the selected candidates, who had not been given appointments though admittedly they are below serial No. 3070 in the merit list upto which the appointments had been made by the respondents. The order dated May 30, 1997 though sought to be challenged in the petition has not been placed on record either by the petitioners or by the respondents. However, this finds mentioned in the order passed by this Court in the Contempt Petition as a policy decision. The case set up by the petitioners is that inspite of their request, the same was not supplied by the respondents. Accordingly, they are unable to produce the same. On the asking of the Court, learned Additional Advocate General, Punjab produced Memo No. 4155/Con.LA dated June 17, 1997, which mentions about the decision for invalidation of the select list having become old. The same is taken on record as Mark 'A'.

9. Learned counsel for the petitioners submitted that action of the respondents in not issuing constabulary numbers to the petitioners, who were selected is clearly arbitrary as with the passing of time, now the petitioners have become over age for the Government service. They have certainly been prejudiced by the inaction on the part of the respondents. Another contention raised by learned counsel for the petitioners is that Director General of Police is not competent authority to issue any such instructions for invalidation of the select list as competence lies only with the State Government and in the present case, there is nothing on record to show that there was any decision of the State Government to invalidate the select list. Reliance has been placed upon the judgments in **Superintendent of Police, Manipur and others Vs. R.K.Tomalsana**

***

Singh (dead) through L. Rs. 1983 (3) Services Law Reporter 551 (S.C.), Mahabir Auto Stores and others Vs. Indian Oil Corporation and others 1990 (2) Services Law Reporter 69 (S.C.) and **Sardul Singh Head Constable Vs. Inspector General of Police, Punjab and others 1970 Services Law Reporter 505.**

10. The prayer is for direction to the respondents to allot constabulary numbers to the petitioners.

11. Controverting the arguments raised by learned counsel for the petitioners, learned Additional Advocate General, Punjab submitted that issues sought to be raised in the present petition have already been gone into by a Division Bench of this Court in Civil Writ Petition No.6276 of 2001 (Satnam Singh Vs. State of Punjab and others) decided on January 13, 2003 whereby similar prayer has already been rejected. Still further the submission is that a select list which is prepared way back in 1993 cannot be operated till infinity by giving appointments to the persons therefrom as same would certainly prejudice the rights of the candidates, who would have become eligible in the meantime and were available to compete for fresh vacancies in case advertised. Another submission made is that mere selection does not confer any right on the selected candidates. The life of the select list, which was prepared way back in 1993 was merely six months as per the instructions of the Government issued vide letter No. 3604-GII (S)-57/21982 dated 2nd November, 1957, and therefore, no right accrues to the petitioners to seek appointments on the basis of select list.

12. Having heard learned counsel for the parties and perusing the judgments cited by them, I am of the considered view that petitions filed by the petitioners are meritless. Admittedly the petitioners were in the select list, which was prepared in the process of selection way back in the year 1993. In the earlier litigation, the issue sought to be raised was merely that persons below in merit list were issued constabulary numbers whereas persons higher in merit list were ignored. Finding merit in the contention raised at that time, comprehensive directions were given by the Division Bench of this Court directing that appointments be given to the selected candidates strictly as per merit and the Department shall take steps to dispense with the services of those who have been appointed bypassing the

***

merit by giving show cause notice to such persons and passing of appropriate orders after giving opportunity of hearing to such persons and further in case any appointment is made in relaxation of the ban imposed by the Government then merit list prepared by the department shall be taken into consideration while appointing the candidates. This shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made.

13. The definite stand of the respondents, which has not been disputed by the petitioners, is that it is only upto Serial No. 3070 in the select list, appointments have been made and the petitioners are below that serial numbers in the merit list. The instructions of the Government which has been cited by the learned Additional Advocate General, Punjab clearly show that validity of the merit list is only upto 6 months. Meaning thereby any selected candidate cannot invoke the jurisdiction of this court after the expiry of this period for a direction to the appointing authority to issue appointment order in his favour.

14. The contention of learned counsel for the petitioners to the effect that Director General of Police was not competent to issue policy instruction for invalidation of the select list also does not have any legs to stand as in the communication placed on record by the respondents, the Director General of Police has merely reiterated the instructions of the Government, which provide for validity of select list and nothing more than that. In **State of U.P. and others Vs. Harish Chandra and others** (**1996) 9 Supreme Court Cases 309**, Hon'ble the Supreme Court held that no direction can be issued for appointment of the candidates from a select list after the expiry of its validity. None of the judgments cited by the petitioners supported the cause sought to be pleaded by them.

15. Further a Division Bench of this court has already considered a similar prayer made by the petitioners therein in Satnam's case (supra) and finding no merit therein dismissed the same vide order dated January 13, 2003. Still further even otherwise, it is settled position of law that mere selection does not confer any right. It is the discretion of the employer whether the appointments are to be issued to selected candidates or not. The only aspect to be seen is that such an action should not be arbitrary.

***

Such facts are missing in the present case. Reference may be made to judgment of Hon'ble the Supreme Court in **State of U.P. and others Vs. Rajkumar Sharma and others 2006 (2) Recent Services Judgments, 284** wherein it was opined as under:-

> "Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination. (See : **Shankarsan Dash Vs. Union of India,** AIR 1991 SC 1612, **Smt. Asha Kaul and another Vs. State of Jammu & Kashmir and another,** 1993 (2) SCC 573, **Union of India Vs. S.S. Uppal,** AIR 1996 SC 2340, **Hanman Prasad Vs. Union of India,** 1996 (10) SCC 742, **Bihar Public Service Commission and others Vs. State of Bihar and others,** AIR 1997 SC 2280, **Syndicate Bank and others Vs. Shanker Paul and others,** AIR 1997 SC 2091, **Vice Chancellor, University of Allahabad Vs. Dr. Anand Parkash Mishra and others**, 1997 (10) SCC 264, **Punjab State Electricity Board Vs. Seema,** 1999 SCC (L&S) 629, **All India SC & ST Employees Association Vs. A. Arthur Jeen,** AIR 2001 SC 1851, **Vinodan T. Vs. University of Calikut,** 2002 (4) SCC 726, **S. Renuka Vs. State of Andhra Pradesh and others,** AIR 2002 SC 1523 and **Baitariani Gramiya Bank Vs. Pallab Kumar and others,** AIR 2000 SC 4248."

16. In the present case the select list is of the year 2003. Appointments have been made only upto serial No. 3070 in the merit list and admittedly the petitioners are much below that number. Accordingly, for the reasons mentioned above, I do not find any merit in the present petition and the same are accordingly dismissed.

December 12, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to reporter)

***